

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 248 of 1985

Hon'ble MR.JUSTICE S.D.DAVE

and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

KOLI JAGSI MANA

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Appearance:

K.C. SHAH, PUBLIC PROSECUTOR for Petitioner  
MR PM VYAS for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 02/09/97

ORAL JUDGEMENT (Per S.D. Dave J.)

1. The respondent-accused came to be acquitted by the learned Additional Sessions Judge, Surendranagar in Sessions Case No.49/84 under the orders dated December 21, 1994. The respondent-accused no.1 came to be acquitted of the offences punishable under sections 302

and 323 read with section 34 IPC and under section 302 of IPC. The accused no.2 came to be acquitted of the offences punishable under section 302 read with section 114 IPC and under section 323 IPC. The State feeling aggrieved with the abovesaid orders of acquittal is before us in the present acquittal appeal.

2. The respondent-accused were put on trial for the alleged commission of the abovesaid offences on the accusation that on 15th June 1984 they had shared the common object to murder Bai Monghiben and to injure her daughter Gauriben, and later on had caused the injuries on the person of deceased Bai Monghiben and had caused injury on the person of Gauriben. The charge is that because of the injuries sustained by her ultimately Bai Monghiben died at the hospital during the course of the treatment. This charge at Exh.3 came to be denied by the accused persons. Ultimately on the appreciation of the evidence on record the learned trial judge has come to the conclusion that the charges were not established against the respondent-accused beyond reasonable doubt.

3. The learned trial Judge has analysed the entire prosecution evidence and has ultimately come to the conclusion that the evidence brought in by the prosecution as a whole was not satisfying the judicial conscience and that very many aspects emerging from the same would lead him viz. the learned Additional Sessions Judge to come to the conclusion that the case being presented by the prosecution was of a doubtful nature and that the evidence would not lead to the conclusion of the establishment of the charges levelled against the accused persons. With a view to examine the correctness of the abovesaid view adopted by the learned trial Judge, we have read the evidence of the prosecution witnesses with the assistance of learned government counsel Mr. K.C. Shah and the learned counsel for the respondent Mr. P.M. Vyas. Upon this exercise we have been satisfied that the view taken by the court below is proper in view of the evidence which was made available to the court below and that there is absolutely no scope for us to take a different view of the matter.

4. The court below has come to the conclusion that the prosecution was able to establish with the support of cogent evidence on record that deceased Bai Monghiben had died a homicidal death. It should be said that this say coming from the learned Additional Sessions Judge must be accepted regard being had to the medical evidence on record. From the evidence tendered by the treating doctor and ultimately by the autopsy surgeon Dr. Gaurang

Kothari (PW3-Exh.14) it appears very clearly that the deceased had sustained the head injury which had resulted into corresponding linear radiating fracture of the frontal bone and that ultimately the deceased had died as a result of the shock resulting from the abovesaid head injuries. In our opinion, therefore, the prosecution was indeed able to establish that the deceased Monghiben had died a homicidal death.

5. So far as the question regarding author of the injuries on the person of Monghiben and Gauriben is concerned, in our opinion, the reference requires to be made to the oral testimony of complainant Hirabhai (PW4-Exh.17). According to Hirabhai, the incident had occurred at about 10 p.m. when he was present in the house in company of his wife Monghiben, daughter Gauriben and his sons. According to him, the accused no.1 had given a blow with a stick with iron stud to his wife and that later on the accused no.2 also had given two or three stick blows to his wife. His say further is that his daughter Gauri also came to be injured during the incident. We would like to point out that the say of the Hirabhai regarding the injuries on the person of deceased Monghiben runs counter to the medical evidence on record because the treating doctors and the autopsy surgeon had noticed only one injury on the frontal aspect of the head of the deceased which had ultimately proved to be fatal. In other words, the say of the complainant Hirabhai in respect of two or three stick blows to the deceased renders the case of the prosecution doubtful and to that extent the oral testimony of the complainant Hirabhai also becomes shaky. It is the case of the defence that three persons came to be injured during the incident and they were on the side of the accused. We will be pointing out that this case of the defence stands accepted by certain other prosecution witnesses, but it should be noticed at this juncture that the complainant Hirabhai has clearly denied this suggestion coming from the defence. It is therefore clear that Hirabhai's evidence not only is found to be unreliable in respect of the injuries sustained by his wife deceased Monghiben, but he is also found to be lying in respect of the important aspect of certain other persons on the side of the accused who came to be injured during the very same incident. Gauriben (PW5-Exh.18) has tried to support the case of the prosecution by saying that the accused persons had assaulted her mother Monghiben and later on she came to be injured because of the stick blows given to her by the accused no.2. Learned counsel Mr. Shah has urged with vehemence that there was absolutely no reason for the court below to discard the evidence of

Gauriben who happens to be an injured eye-witness, but it should not go unnoticed that Gauriben was obliged to say during the cross-examination that when she had reached the spot of occurrence, near the house of one Jetha Ravana, she had seen her mother lying there in the injured condition. This say of Gauriben requires to be examined from two angles. Firstly her say would change the topography of the scene of occurrence because the case of the prosecution is that Monghiben and Gauriben came to be assaulted upon when they were in their house. The say of Gauriben would go to show that the incident had occurred and her mother was found lying near the house of one Jetha Ravana. So far as the injuries on the person belonging to the group of the accused is concerned, Gauriben has said that during the incident three persons viz. Jeram Ranu, Mana Bhikha and Laghra Soma also came to be injured. She has denied the suggestion during the cross-examination that her father, the complainant Hirabhai, had caused the injuries to the abovesaid three persons and that ultimately a false case was made. Reading the evidence of Gauriben as a whole it appears that she changes the scene of occurrence, admits the injuries on three persons on the side of the accused, but does not offer any explanation for the same and her case regarding her own injuries also does not completely stand corroborated by the medical evidence on record.

6. Sarpanch Narsingbhai (PW-6 Exh 19) does not render any assistance to the case of the prosecution. This is so because of his change in version during his testimony before the court below. This witness has said that Hirabhai had approached him at his house and had complained that the respondent-accused were abusing him and therefore he had gone in company of Hirabhai with a view to pacify the respondent-accused, and at that time Monghiben and Gauriben were present there. During the cross-examination Narsingbhai says that he had seen that Mana Bhikha, Jeram Renu and Laghara Soma were also injured, but he has stated that they were not injured during the incident itself. Again he says that all the three persons were taken to the hospital for treatment. Anyhow, during the concluding portion of his evidence he puts an end to what he has said before because he has extended a candid admission saying that when he had gone to the spot of the occurrence the entire episode was over. Therefore as indicated by us earlier, the evidence of this witness would not render any assistance to the case of the prosecution. Prosecution witness Savshi (PW-7 Exh.20) has tried to support the case of the prosecution. His version is that his father had gone to call the Sarpanch and in the presence of the sarpanch the

incident had occurred and the deceased came to be injured. But he stands contradicted by the testimony of independent witness Narsingbhai to which we have made the reference earlier. Narsingbhai has stated that he came to the spot only after the incident was over. Because of this contradiction in the evidence of Sarpanch and this witness, the court below has come to the conclusion that he cannot be accepted as an eye witness to the incident. The same is our opinion regard being had to the abovesaid contrary version. There is one more aspect emerging from the evidence of Savashi when he says that all the three injured persons belonging to the members of the group of the accused came to be injured by dharia and they came to be injured while fighting interse. This say of Savashi makes his say before the court below entirely unbelievable and he appears to be a witness who had gone to the extent of saying anything with a view to explain away the circumstances which would be against the case of the prosecution.

7. Becharbhai (PW-8 Exh.32) has also made endeavour to see that the case of the prosecution is presented in the proper form. But during the cross-examination he says that the incident had occurred near the house of Jetha Ravana and when he had reached there Hirabhai, the complainant was not present. He has further said that when Hirabhai had reached the spot in company of the sarpanch, the entire incident was over. Therefore the evidence of Becharbhai instead of supporting the case of the prosecution would go against it. From his evidence a permissible conclusion can be drawn that the complainant was not present when the incident took place and he had reached there in company of the village sarpanch only after the entire episode was over. Not only this, but Becharbhai has also said in the cross examination that he had learnt later on that three persons on the side of the accused came to be injured during the incident and that in the same way Gauriben and Monghiben also came to be injured. He has further made it clear that because of the dark of the night he was not able to see as to how and by whom the two ladies viz. Monghiben and Gauriben came to be injured. Gorabhai (PW-9-Exh.33) has also deposed in the same way. According to him when he had reached the spot of occurrence, the entire episode was over. Even if the evidence of Gorabhai is not taken into consideration and is discarded as the testimony of a witness who was required to be contradicted with his statement, the entire prosecution evidence appears to be shaky and unreliable.

8. To recapitulate it should be appreciated that the

medical and ocular version runs counter to each other and the so-called presence of the complainant and eye witness on the spot of occurrence appears to be entirely doubtful. The evidence when read as a whole creates an impression that not only Hirabhai, but also Gauriben and her brother reached the spot of occurrence only after the episode was over. Three persons on the side of the accused also came to be injured and according to the version being furnished by one of the prosecution witnesses the injuries were caused by dharia and the said three persons were required to be treated in the hospital. Moreover, there was a complaint in this respect both by the injured people against the complainant and the members of the family.

9. Learned counsel Mr. Vyas wanted to place reliance upon the Supreme Court pronouncement in the case of Lakshmi Singh Vs. state of Bihar (AIR 1976 SC 2263) with a view to urge before us that there has been the non-explanation of the injuries sustained by certain people belonging to the accused group. Learned counsel Mr. Shah urges that the said contention does not appear to be open to the learned counsel for the defence because the Supreme Court decision speaks of the non-explanation of the injuries sustained by the accused. Even if the say coming from the learned counsel Mr. Shah is accepted, then also the fact remains that the complainant and all the prosecution witnesses had nothing to say regarding the injuries which came to be caused to the three persons belonging to the group of the accused.

10. Because of the abovesaid prominent features emerging out of the case of the prosecution, we have to concur with the view expressed by the court below that the case of the prosecution was not being proved beyond reasonable doubt. In our opinion, therefore, no interference at our hands appears to be justifiable as no other view appears to be permissible to us. The present appeal, therefore, fails and the same requires to be dismissed. We order accordingly. The orders of acquittal under challenge are hereby upheld and confirmed. Bail bonds taken in pursuance of the bailable warrants issued by this court shall stand cancelled.

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